IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

WP(C).No. 20238 of 2004(S)
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OA.602/2003 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

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PETITIONER:

1. THE SR.MANAGER, MAIL MOTOR SERVICE,
   KOCHI 682 016.

2. THE DIRECTOR OF POSTAL SERVICES,
   CENTRAL REGION, KOCHI 682 018.

3. THE CHIEF POSTMASTER GENERAL,
   KERALA CIRCLE, THIRUVANANTHAPURAM 695 033.

4. THE MEMBER (PERSONNEL) POSTAL SERVICE
   BOARD, DAK BHAVAN, NEW DELHI.

5. UNION OF INDIA, REP.BY ITS SECRETARY TO
   GOVERNMENT OF INDIA, MINISTRY OF COMMUNICATIONS,
   NEW DELHI.

BY ADV. SRI.S.KRISHNAMOORTHY, ADDL.CGSC
SRI. T.D. RAJALAKSHMI

RESPONDENTS:

1. A.K.DIVAKARAN, S/O.KUNJAN BAVA,
   DRIVER, MAIL MOTOR SERVICE, ERNAKULAM.

2. CENTRAL ADMINISTRATIVE TRIBUNAL,
   ERNAKULAM BENCH, REP. BY ITS REGISTRAR.

**ADDL. R3 & R4 IMPLEADED**

3. V.K. PUSHPA, W/O. LATE A.K. DIVAKARAN,
AGED 41 YEARS, RESIDING AT
ALUNKATHARA HOUSE, ERNAKULAM,
COCHIN - 682 020.

4. DILISH D, S/O. LATE A.K. DIVAKARAN,
AGED 18 YEARS, RESIDING AT
ALUNKATHARA HOUSE, ERNAKULAM,
COCHIN - 682 020.

( ADDL. R3 & R4 ARE IMPLEADED AS PER ORDER
DT. 12/12/2005 IN I.A. NO. 18056/05)

BY ADV. SRI.P.A.KUMARAN
SRI.SUNILNATH
SRI.JOSE JOSEPH (MANNAR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO. 20238 OF 2004

**APPENDIX**

PETITIONERS' EXHIBITS:

EXHIBIT P1: TRUE COPY OF O.A. NO. 602/2003 WITH ANNEXURES

EXHIBIT P2: TRUE COPY OF REPLY STATEMENT FILED BY THE PETITIONERS HEREIN IN O.A. NO. 602/2003

EXHIBIT P3: TRUE COPY OF ORDER IN OA NO. 602/2003 DT. 05.04.2004 PASSED BY CAT, ERNAKULAM.

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

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W.P.(C). NO. 20238 OF 2004

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Dated this the 1st day of February 2007

**JUDGMENT**

Abdul Gafoor,J

Challenge is against Ext. P3 order of the Central Administrative Tribunal whereby imposition of penalty of removal from service has been set aside. The applicant has been ordered to be reinstated with back wages. This writ petition has been filed on 05.07.2004. It has been specifically urged in ground G that "It is respectfully submitted that the 1st respondent was reinstated in service as per the order of the Tribunal on 30.06.2004." Thus, the applicant has been reinstated and it is after such reinstatement the writ petition has been filed. Reinstatement has been directed in Ext. P3 of the Tribunal. Therefore, the challenge against Ext.P3 as contained in this writ petition is not against the direction to reinstate the same, but as rightly prayed in prayer No. 1 " to the extent it directs the petitioner to pay the 1st respondent full back wages with the continuity of service and all consequential benefits."

2. This means the direction for reinstatement on setting aside the imposition of penalty on removal is accepted by the writ petitioners, the administration. When it is so accepted, the statutory provision that operates is clause 3 of F.R 54-A which reads as under:

> "**If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be. "**

When this statutory provision operates and as the petitioners have already reinstated the applicant, he shall have to be paid the entire back wages. There is no other way for the administration to get out of that liability.

3. Going by Articles of Charges Annexure 2 in Ext. P1 original application, the applicant has been charged that he had failed to maintain devotion to duty in so far as he got involved in an accident while driving a motor mail service van. It was alleged by the petitioner that there was a rash and negligent driving by the delinquent which ultimately resulted in this accident. There was also a criminal case on the same set of facts. Therefore, the facts framing basis for disciplinary action as well as criminal case are one and the same. Necessarily, the direction laid down in the decision of the Supreme Court reported in **G.M. Tank v. State of Gujarath & others** ( 2006 (5) SCC 446) squarely applies to this case. Further, the applicant is no more. After reinstatement he died on 26.10.2005 and his legal representatives are now on record, to contest the challenge against award of back wages. In the aforesaid circumstances, we are of the view that the Tribunal was justified in awarding back wages, in terms of sub Rule 3 of FR 54A.

4. The contention that the said rule applies only when the dismissal order comes to the finality, as urged by the Additional Standing Counsel does not have any force when the writ petitioners challenged only the award of back wages accepting the order of back wages. Whatever benefit due to the legal representatives shall be given within three months.

The writ petition is accordingly dismissed.

**K.A. ABDUL GAFOOR, JUDGE**

**K.R. UDAYABHANU, JUDGE.**

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